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2 REPORTER'S NOTE:

3 Since this deposition is in rough draft
4 form, please be aware that there may be a
5 discrepancy regarding page and line number when
6 comparing the rough draft, rough draft disk and
7 the final transcript.

8 Also, please be aware that the uncertified
9 rough draft transcript may contain untranslated
10 steno, reporter's notes, misspelled proper
11 names, incorrect or missing Q/A symbols or
12 punctuation and/or nonsensical English word
13 combinations. All such entries will be correct
14 on the final, certified transcript. There may
15 also be portions of the transcript that are
16 missing that will also be correct on the final,
17 certified transcript.

18 Victoria S. Stuart
19 RPR
20 Court Reporter
21 CONNOR + ASSOCIATES

22 *****

23 DIRECT EXAMINATION,

24 QUESTIONS BY MR. TIMOTHY KELLER:

25 Q Ms. Gross, my name is Tim Keller, and I'm taking
your deposition today, in response to a notice
that was provided to your counsel, asking that
Anthem provide certain persons with knowledge of
certain events. And it has been indicated that
you have information responsive to the actual
basis for Mr. Garner's discharge, including any
investigation of complaints made by or about
Mr. Garner during 1997 or 1998.

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1 Are you prepared to testify on those events
2 today?

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24 date of February 13, 1998; correct?

25 A Yes.

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1 Q Okay. Turning to the last page of Plaintiff's

2 Exhibit No. 37, marked Anthem 89?

3 A Uh-huh.

4 Q Is that your signature at the bottom of the
5 document?

6 A Yes.

7 Q And you would have signed this on February 20,
8 1998; is that correct?

9 A Yes.

10 Q Do you recall reviewing this, now, in
11 February 20, of 1998?

12 A Actually, my name is on there, so I must have
13 reviewed it.

14 Q You just don't recall at this --

15 A I really don't recall.

16 Q Okay. Well, since this one has your name on it,
17 I want to talk about this one, so --

18 A Okay.

19 Q -- turning to the first page, which is Anthem
20 86, first of all, the numbering system utilized
21 on this document runs from one through four;
22 correct?

23 A Yes.

24 Q With four being the highest rating and one being
25 the lowest; is that correct?

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- 1 A Yes.
- 2 Q And for all the categories in which Mr. Garner
- 3 was ranked on this performance appraisal, he
- 4 received either a three or the highest rating of
- 5 four; is that accurate?
- 6 A Yes.
- 7 Q Now, back on the first page, Anthem 86, I'd like
- 8 to ask you about the information appearing in
- 9 the third box down that starts with provide
- 10 direction to the HMP staff; do you see what I'm
- 11 referring to?
- 12 A Yes.
- 13 Q And what's in the first box, the job
- 14 responsibilities and measures; correct?
- 15 A Correct.
- 16 Q And that were -- that's -- that would have been
- 17 Mr. Garner's job responsibilities and measures
- 18 through February of '98; correct?
- 19 A Yes.
- 20 Q And one of his responsibilities was ensure the
- 21 compliant with government regulations and pre
- 22 serve the integrity of the plan; correct?
- 23 A That was a responsibility of all of our
- 24 managers.
- 25 Q And it was certainly Mr. Garner's

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- 1 responsibility, as indicated on the performance
- 2 plan appraisal?

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3 A Yes.

4 Q Do you see under comments, now, this is
5 something that do you know who would have placed
6 these comments on to the performance plan
7 appraisal.

8 A Jim's manager, Kathy Hinkle.

9 Q Okay. And under the comments on this
10 responsibility, it states, exceeded performance
11 in each category except accuracy, which was
12 related to the APM issue; do you see that?

13 A Yes.

14 Q Do you know what the APM issue was?

15 A Specific to this, to this I know there were some
16 issues with -- with -- APM, when we made a
17 benefit plan change and I'm not certain whether
18 that is referring to that is. It doesn't give
19 us any specifics.

20 Q Do you recall what APM issues do you recall?

21 A We made a benefit change, as we did with the HMO
22 annually to make the benefits better. And one
23 year we gave the FEP beneficiary I didn't say
24 access to mail order forms in addition to
25 retail.

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1 Q And as a result, is it your understanding APM
2 did not understand the addition of that benefit
3 for the FEP employee plan?

4 A FEP understood because they administered it and
5 they, you know, they administered the benefit

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6 line of questioning.

7 Ms. Gross, Mr. Garner was well thought of
8 as of at least February 13, 1998, by Anthem;
9 correct?

10 A Yes.

11 Q And he was I valid employee of the FEP team was
12 he not?

13 A Jim made contributions to the FEP team.

14 Q And. Would you not consider hell a valid
15 employee of the FEP team at least in February of
16 1998?

17 A Candidly, it was too soon for me to tell. I
18 know that he made contributions to the FEP team.

19 Q well, you certainly reviewed Plaintiff's
20 Exhibit 37, which was his employee evaluation;
21 correct?

22 A Yes.

23 Q And you were aware of what Ms. Hinkle thought of
24 Mr. Garner as of February of '98; correct?

25 A Right.

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1 Q Prior to February of 1998, would it be accurate
2 to say you were not aware of any deficiencies in
3 Mr. Garner's performance at Anthem?

4 A That's correct.

5 (A discussion was held off the record.)

6 Q Subsequent to February of 1998, some events
7 occurred which led to the termination of
8 Mr. Garner; correct?

9 A Yes.

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10 Q And are you aware of what led to the termination
11 of Mr. Garner?

12 A Yes, I am.

13 Q And can you explain to me what led to his
14 termination?

15 A Yes, I can. And let me get my thoughts
16 together.

17 Sue Ulrey had launched an investigation,
18 and this investigation was in the March time
19 period. I got a call from Kathy Hinkle, stating
20 that Jim was quite anxious about his interview
21 with Sue Ulrey, and would like to move that
22 interview up not only for Jim but for herself.

23 Apparently, this was causing some anxiety
24 within the organization. Sue Ulrey was not
25 scheduled to come to Ohio, I guess for another

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1 week or so. And so Kathy asked my permission to
2 drive to than into conduct the interview. And
3 that took place, I believe at the end of March.

4 During that time, as any company
5 investigation, societies are told not to discuss
6 the interview or the audit or the investigation.
7 And this certainly was the case with Mr. Garner.

8 Based on information from Kathy Hinkle, and
9 from HR, Mr. Garner was discussing the audit
10 process, was making slanderous comments, about
11 his manager, and upset her secretary to the
12 point where she had left office and needed to go

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13 home because she was in tears. Obviously,.

14 Q Just a second.

15 MR. DYER: You can continue at your pace
16 you don't have to waited for him to take notes
17 he can have your answer read back so collected
18 your answer and go at your own is pace and he
19 will go back and read, do you wanted to hear
20 back what you just said are or are you okay.

21 A Well, I was describing the period of time the
22 week between I don't know whether it was a week
23 or it was actually about four or five days
24 between the interview and the time that I met
25 with Jim along with Fred Brown.

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1 And this was after an episode that occurred
2 with Mary O'Rourke, that Mary was extremely
3 upset with regard to information and discussion
4 that Jim had had with her.

5 He made.slanderous comments about Kathy, he
6 threatened to quoted take her down, and creed a
7 very uncomfortable, unproductive work
8 environment. The next day, we summoned Jim to
9 the Mason office, and Fred Brown led the
10 discussion with Jim, and we recommended that Jim
11 be suspended from his current position for a
12 period of time not only so that he could think
13 but give us some time to think about whether it
14 would be acceptable for Jim to continue his
15 employment with us. And that discussion
16 occurred on April 2nd.

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17 The following week, I had discussions with
18 Kathy Hinkle, to determine if she felt that she
19 could have confidence in Jim and Jim's ability
20 to perform his function to retain his
21 employment. And if we could move into a
22 productive none hostile work environment for all
23 associates. And with her advice and counsel
24 from HR, we viewed that that was not possible.
25 Therefore we found it necessary to terminate

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1 Mr. Garner's employment. Because we had lost
2 confidence in him, and his behavior and
3 decision-making ability.

4 Q Is that it?

5 A Yes.

6 MR. KELLER: Can you read back her
7 response.

8 MR. DYER: As it reads it back if you noted
9 anything that you wanted to add details or
10 otherwise just mentally make a noted on it and
11 you can figure out later to add to it.

12 (The requested material was read by the
13 reporter.)

14 Q Ms. Gross, the event you just described, in your
15 in answer to my last question all of this
16 occurred in 1998; correct?

17 A Yes.

18 Q So the investigation, the Ulrey investigation
19 that you referred to, would that be the

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20 investigation that we discussed earlier the
21 findings depicted in plaintiff's Exhibit No. 34?
22 A Yes, it is.
23 Q And Ms. Hinkle requested that both her interview
24 and Mr. Garner's interview be moved up; correct?
25 A Yes.

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1 Q And she asked that she be allowed to drive to
2 Ohio -- no, withdraw that question.
3 She asked that she be allowed to drive to
4 Indianapolis, to --
5 A Yes.
6 Q -- conduct her interview with Ms. Ulrey?
7 A Yes.
8 Q And I guess she was also requesting that
9 Mr. Garner be allowed to do the same thing?
10 A That's correct.
11 Q Now, did you hear anyone tell Mr. Garner that oh
12 was not to discuss his interview, the audit, or
13 the investigation that Ms. Ulrey was connecting
14 with anyone?
15 A That is typical protocol.
16 Q Okay. But my question is, did you hear anyone
17 give Mr. Garner those instructions?
18 A No. I was not with Mr. Garner when he had his
19 interview.
20 Q Okay. Normally, when an investigation
21 sufficient as this is done though you understand
22 that to be the protocol is that correct?
23 A That's correct.

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6 Mr. Garner had stated?
7 A No.
8 Q Did you ever speak with Ms. O'Rourke?
9 A I never spoke to Ms. O'Rourke.
10 Q Did you?
11 A No, actually I don't know whether Michael's,
12 whether Jim said that to Michael or Michael was
13 repeating what Mary said. Oh --
14 Q Okay?
15 A To be fair now that I think about it I'm not
16 sure okay.
17 Q Now that you have had the chance to think about
18 your previous response, could it be that
19 Mr. Jensen?
20 A Was repeating what Mary said, right.
21 Q Okay. To your knowledge, does the information
22 about taking Kathy down, all originate from Mary
23 O'Rourke?
24 A Too my up, it.
25 Q You have no other information indicating

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1 Mr. Garner allegedly made this statement to
2 anyone but Ms. O'Rourke; correct?
3 A Not to my knowledge.
4 Q Okay. Did anyone in human resources relay to
5 you that Mr. Garner had made that statement to
6 anyone else other than Ms. O'Rourke?
7 A I really wouldn't know that, I would think we
8 would have to check with human resources.
9 Q Okay. Is it fair to say in reaching you're

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- 10 decision to terminated Mr. Garner, you believed
11 statement he had allegedly made to Ms. O'Rourke
12 was actually made?
13 A Yes.
14 Q What steps did you take to verify Mr. Garner had
15 made that statement?
16 A The HR area did verify that and did talk with
17 Mary about that. And so there was a validation
18 that was done at that juncture with Kathleen
19 O'Neil.
20 Q Would it surprise you to learn that Mary
21 O'Rourke testified that no one from human
22 resources spoke with her?
23 MR. DYER: Surprises happen every day in
24 life. That's not a fair question. Object.
25 A I didn't know that.

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- 1 Q Did you see any written report from HR regarding
2 an interview they conducted of Mary O'Rourke?
3 A I did not.
4 Q Did you see any handwritten notes of anyone
5 regarding an interview they conducted of Mary
6 O'Rourke?
7 A No, I did not.
8 Q Mary O'Rourke. And you didn't speak with Mary
9 O'Rourke?
10 A I did not speak with Mary directly.
11 Q Okay. So in believing that Mr. Garner had made
12 that's statements to Ms. O'Rourke, you were

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13 relying on the information provided to you by
14 Ms. Hinkle?
15 A Yes.
16 Q And meetings O'Neil is that correct?
17 A Yes.
18 Q Anyone else?
19 A I just think that the conversation that I had
20 with Michael reiterating how upset Mary was, and
21 you know, the fact that the, you know, the
22 entire office was in a state of acknowledge
23 station.
24 Q Okay did Mr. Jensen relay to you any complaints
25 Mr. Garner had brought to his attention

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1 regarding compliance in the FEP program in this
2 time period?
3 A Not at all.
4 Q Did Ms. Hinkle bring to your attention any
5 compliance issues Mr. Garner had raised with her
6 during this time frame?
7 A Not at all.
8 Q Okay. Did Ms. Ulrey tell you -- oh, did you
9 have any discussions with Ms. Ulrey regarding
10 these statements of Mr. Garner we have been
11 discussing or his termination?
12 A Actually, I did check with Ms. Ulrey prior for
13 the termination.
14 Q Okay?
15 A Because the termination was behavioral based,
16 there was no other reason. Other than that.

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17 Decision-making behavioral based I wanted to
18 make sure that you know this would not impinge
19 upon her investigation or anything about you
20 that regard, and she viewed it as purely an HR
21 issue, and agreed that and agreed to support the
22 decision the.

23 Q Okay. Would you have had this discussions
24 before or after the first meeting with
25 Mr. Garner?

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1 A I believe that I had that discussion during that
2 week period of time.

3 Q The week between your first meeting and your
4 setting meeting with Mr. Garner?

5 A Yes, uh-huh. Because the first meeting took
6 place very quickly.

7 Q Okay. Well that conversation with Ms. Ulrey
8 would have been after she had conducted her
9 interview of Ms. Hinkle; correct?

10 A Yes, because I think that both Jim and Kathy
11 were interviewed around the same time.

12 Q Okay. Did Ms. Ulrey advise you that Ms. Hinkle
13 had told Ms. Ulrey during her investigation, or
14 during her interview, that Jim had indicated
15 items had billed as covered but shouldn't have
16 been?

17 A No, she didn't.

18 Q Did she relay to you that Jim -- that Ms. Hinkle
19 said that Jim had relayed to her a lack of

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13 he was a strong member of the FEP team, and one
14 who is always willing to added extra effort and
15 enthusiasm to achieve a goal; correct?
16 A That's what she said.
17 Q You were aware she said that about Jim?
18 A Yes.
19 Q You were also aware that he was very much
20 involved in the reorganization of the marketing
21 department at FEP; correct?
22 A Yes.
23 Q You were aware that he had made the proposed
24 organizational reorganization; correct?
25 A Correct.

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1 Q You were aware that he was in the process of
2 implementing that reorganization; correct?
3 A Yes.
4 Q And you were aware that Ms. Hinkle said that his
5 vision is clear and supports Anthem goals and
6 strategies; correct?
7 A That's what she said.
8 Q Yet in less than two months time, you reached
9 the conclusion based on what Ms. Hinkle told
10 you, what HR told you, and what Mr. Jensen told
11 you, that he did not have sufficient management
12 skills for his position?
13 MR. DYER: Objection misstates her
14 testimony.
15 A No. That his -- that his professionalism, his
16 decision-making, was not acceptable. His

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- 17 behavior.
- 18 Q Well his decision-making was?
- 19 A His decision-making with regard to his behavior
- 20 and speaking about the audit with other people,
- 21 when he was told not to, he made the decision to
- 22 do that. That showed poor judgment, bad
- 23 decision making.
- 24 Q And who did he discuss the audit with?
- 25 A He discussed audit with a number of people.

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- 1 Q And?
- 2 A One of which I think is noted, believe is node
- 3 on the Julie Townsend.
- 4 Q And who is Julie Townsend?
- 5 A I don't know Julie Townsend personally, and
- 6 those were Fred's notes, when Julie had some I
- 7 believe was in her Kentucky office.
- 8 Q And what did Jim say to Julie Townsend?
- 9 A I was not a patient to that consideration.
- 10 Q So whatever statements he made to Julie
- 11 Townsend, was that not something you relied upon
- 12 in deciding to terminate him?
- 13 A Yes, it is.
- 14 Q It is?
- 15 A Right.
- 16 Q How do you know he made these statement toss
- 17 Ms. Townsend?
- 18 A Because HR told me that he did.
- 19 Q Did HR tell you what the alleged statements

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20 consisted of --
21 A I don't recall specifically what the word by
22 word was but basically discusses the audit.
23 Q Does Ms. Ulrey tell you that she had instructed
24 Jim not to discuss the audit with anyone?
25 A That is standard operating procedure, for her to

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1 say that.
2 Q well I understand that?
3 A I did not she did not specifically tell me that
4 he does that.
5 Q Okay.
6 A But that is the protocol.
7 Q That is standard protocol?
8 A Right.
9 Q But no one told you they had told Jim not to
10 discuss his interview or the audit is that
11 correct?
12 A That is correct.
13 Q Okay. No, would it be a fair statement,
14 Ms. Gross, to say that you relied on the
15 information provided by human resources, to
16 ensure you had all of the necessary information
17 when deciding whether or not to terminate
18 Mr. Garner?
19 A It was information from human resources, and
20 from Kathy Hinkle.
21 Q Okay. What other alternative disciplinary
22 actions were considered regarding Mr. Garner?
23 A Actually, there were none. Because of his level

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17 the oh second one.
18 Q And he was told whichever meeting that he could
19 not correct?
20 A I believe that was the case, yes.
21 Q Was that you that told him no?
22 A I believe it was the HR person who said no.
23 Q Mr. Brown?
24 A Yes or if it was Ms. O'Neil -- I remember him
25 asking that question, but I don't remember which

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1 meeting it was.
2 Q Okay. Do you know why he was not allowed to
3 record the conversation?
4 A I actually don't know why.
5 Q If the meeting had been court record, there
6 would be no issues about what was actually said
7 at it would you agree?
8 MR. DYER: Object, argumentative calls for
9 speculation you can answer.
10 Q Subject to the objection.
11 A Well, I suppose so, yes.
12 Q We would definitely know what was said --
13 A Yes.
14 Q -- at the meeting if it had been recorded.
15 When this comment, the fourth, or let's
16 see -- the fifth bullet point, disruptive to the
17 staff, which staff members is that comment
18 referring to?
19 A You know actually I think that a number of

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20 members of the staff were disrupt and felt that
21 it was not a not the appropriate work
22 environment, not the least of which was Mary
23 O'Rourke and Kathy Hinkle but it also involved
24 other people in the department, as well.
25 Q Mr. Jensen, was he?

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1 A Right.
2 Q Okay?
3 A And you know, and obviously when you have got
4 your management team that are upset, then all of
5 the societies are upset, you know it kind of has
6 this trickle down approach.
7 Q I'm glad that brought up a question, you used
8 the terminology sobriety his previously, what do
9 you mean by that?
10 A That's term that we use add Anthem for
11 employees.
12 Q Is that?
13 A That does, typically we use that for none
14 management people.
15 Q Okay. Do you recall Mr. Brown or yourself
16 asking Mr. Garner, do you understand all of that
17 is being said?
18 A Yes, I recall that specifically.
19 Q Okay?
20 A That Fred said that.
21 Q And what did Mr. Garner did he respond to that?
22 A Yes, he did.
23 Q And what did he say?

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24 A I'm not sure if he said anything or if he
25 nodded. Jim didn't talk a lot during this

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1 meeting.

2 Q well, he didn't do you believe he had any reason
3 to know the purpose of this meeting until he got
4 to your office?

5 MR. DYER: Objection calls for speculation.

6 A I really don't know don't know.

7 Q You can see based on information provided to
8 him, yes might be somewhat shocked or surprised?

9 MR. DYER: Objection calls for speculation.

10 A I would be surprised if I would be surprised if
11 he was surprised, because it was creating quite
12 an unset link environment.

13 Q well, if you were called into your superior's
14 office and setting there is the vice president
15 of HR, and you're told that your being suspended
16 immediately with pay, would you not be
17 surprised?

18 MR. DYER: Objection it is argumentative,
19 you're squandering your time well.

20 MR. KELLER: Subject to the time.

21 MR. DYER: On argumentative and unnecessary
22 questions Mr. Keller. You're arguing with the
23 witness.

24 MR. KELLER: Mr. Dyer I don't want your
25 comments on the record if you wanted to object,

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